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*Attorneys for GitHub, Inc. and Microsoft Corporation*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

J. DOE 1, et al.,  
  
Individual and  
Representative Plaintiffs,  
  
v.  
  
GITHUB, INC., et al.,  
  
Defendants.

Case No. 4:22-cv-6823-JST

Consolidated w/ Case No. 4:22-cv-7074-JST

**NOTICE OF SUPPLEMENTAL  
AUTHORITY RELEVANT TO  
DEFENDANTS GITHUB AND  
MICROSOFT'S MOTIONS TO DISMISS  
PORTIONS OF THE FIRST AMENDED  
COMPLAINT IN CONSOLIDATED  
ACTIONS**

AND CONSOLIDATED ACTION

Defendants GitHub, Inc. (“GitHub”) and Microsoft Corporation (“Microsoft”) hereby notify the Court of newly issued authority relevant to their Motions to Dismiss Portions of the First Amended Complaint. ECF Nos. 107, 108. On November 20, 2023, the United States District Court for the Northern District of California issued an order dismissing a number of related claims, including claims for vicarious copyright infringement, claims under Section 1202 of the Digital Millennium Copyright Act (DMCA), claims under California’s Unfair Competition Law, unjust enrichment, and negligence. Order Granting Mot. to Dismiss, *Kadrey v. Meta Platforms, Inc.*, No. 23-cv-03417-VC (N.D. Cal. Nov. 20, 2023), ECF No. 56 (Chhabria, J.). In pertinent part, the Court found that “[t]here are no facts to support the allegation that LLaMA [Large Language Model Meta AI] ever distributed the plaintiffs’ books, much less did so ‘without their CMI[,]’” which “is fatal to the Section 1202(b) claims.” *Id.* at 3 (citing *Free Speech Sys., LLC v. Menzel*, 390 F. Supp. 3d 1162, 1175 (N.D. Cal. 2019)). The Court further found that “[t]he allegation that Meta violated Section 1202(a)(1) of the DMCA also fails because the plaintiffs have not plausibly alleged that LLaMA is an infringing derivative work.” *Id.*

A true and correct copy of the order is attached hereto as Exhibit 1.

Dated: November 21, 2023

Orrick, Herrington & Sutcliffe LLP

By: /s/ Annette L. Hurst  
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GitHub, Inc. and Microsoft Corp.